



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Public Health Service

#12

Food and Drug Administration  
Rockville MD 20857

APR 26 2000

Re: Synercid®  
Docket No. 00N-1251

The Honorable Q. Todd Dickinson  
Director of U.S. Patent and Trademark Office  
Commissioner for Patents  
Box Pat. Ext.  
Washington, D.C. 20231

RECEIVED  
APR 27 2000  
FINNEGAN, HENDERSON  
FARABOW, GARRETT & DUNNER, LLP

Dear Director Dickinson:

This is in regard to the application for patent term extension for U.S. Patent No. 4,668,669 filed by Rhone Poulenc Rorer S.A. under 35 U.S.C. § 156. The human drug product claimed by the patent is Synercid® (quinupristin and dalfopristin), which was assigned new drug application (NDA) No. 50-747.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in *Glaxo Operations UK Ltd. v. Quigg*, 706 F. Supp. 1224 (E.D. Va. 1989), *aff'd*, 894 F.2d 392 (Fed. Cir. 1990).

The NDA was approved on September 21, 1999, which makes the submission of the patent term extension application on November 10, 1999, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the *Federal Register*, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely yours,

Jane A. Axelrad  
Associate Director for Policy  
Center for Drug Evaluation and Research

cc: Charles E. Van Horn  
Finnegan, Henderson, Farabow, Garrett & Dunner  
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